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OFFICE OF PETITIONS

In re Application of	:	
Fostick et al.	:	
Application No. 09/848,339	:	ON PETITION
Filed: May 4, 2001	:	
Attorney Docket No. Q63704	:	

This is a decision on the petition under 37 CFR 1.181 requesting the withdrawal of the holding of abandonment in the above-identified application, filed December 23, 2005, and alternatively a petition under 37 C.F.R. § 1.137(b) to revive the above-identified application.

The petition under 37 C.F.R. § 1.181 is **DISMISSED**.

The petition under 37 C.F.R. § 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to timely and properly reply to the Notification of Non-Compliant Appeal Brief (Notice) mailed June 3, 2005. Accordingly, the above-identified application became abandoned on July 4, 2005. A Notice of Abandonment was mailed on November 2, 2005.

Petitioner states that the Notice of Abandonment was improper as "the subheadings contained in the July 5, 2005 Appeal Brief are all proper and accurate, and fully compliant with the Rules." Further, petitioner states "the Appeal Brief incorrectly refer in some instances to claim 24, instead of claim 34 when arguing the patentability of the appeal claims."

The Notice mailed June 3, 2005 states, "Sub-headings for claims 34 and 49 do not correspond to the supporting statements which indicates claims 24 and 49 in the appeal brief sections summary of the claimed subject matter." The Appeal Brief submitted in response to the Notice did not correct the above error. As stated in 37 CFR 714.03:


The practice set for in 37 CFR.1.135(c) does not apply where there has been a deliberate omission of some necessary party of a complete reply; rather, 37 CFR 1.135(c) is applicable only when the missing matter of lack of compliance is considered by the examiner as being "inadvertently omitted." Likewise, once an inadvertent omission is brought to the attention of the applicant, the question of inadvertence no longer exists.

Accordingly, since the error was not corrected after it was brought to the attention of the petitioner, the abandonment was not improper.

However, the petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an Appeal Brief; (2) the petition fee; and (3) the

required statement of unintentional delay have been received. Accordingly, the response has been accepted as having been unintentionally delayed.

This matter is being referred to Technology Center 2600 for further processing.


Liana Walsh
Petitions Examiner
Office of Petitions